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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Pay)
Telephone Reclassification) CC Docket No. 96-128
and Compensation Provisions)
of the Telecommunications)
Act of 1996)
)
To: The Commission)

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Mobile Telecommunication Technologies Corp. ("Mtel"), pursuant to Section 1.429 of the Commission's rules and Section 405 of the Telecommunication Act, hereby submits its Opposition to the Petition for Reconsideration of the Commission's Second Report and Order in CC Docket No. 96-128 (the "Second Report and Order")¹ submitted by the RBOC Coalition², Peoples Telephone³, and the APCC⁴ (collectively, the "Payphone Advocates").

¹ See, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report and Order, FCC 97-371, ___ FCC Rcd ___ (1997), (rel. Oct. 9, 1997), 62 Fed Reg. 58659 (Oct. 30, 1997).

² Petition for Reconsideration submitted by the RBOC/GTE/SNET Coalition (the "RBOC Coalition") on December 1, 1997.

³ Petition for Reconsideration, submitted by Peoples Telephone Company, Inc. ("Peoples Telephone") on December 1, 1997.

⁴ Petition for Partial Reconsideration of the American Public Communications Council ("APCC") submitted December 1, 1997.

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I. INTRODUCTION

The public record reflects that eleven parties filed petitions for reconsideration in this proceeding.⁵ Notably, only three parties, supported the Commission's use of a "market-based rate" for per call compensation for access code and subscriber 1-800 calls, or otherwise argued that Payphone Service Providers (PSP's) would be compensated more generously for such calls. The RBOC Coalition went even further, and argued that while the "Commission's methodology is, for the most part, sound[.] [I]ts application, however, is flawed in critical respects". RBOC Petition, at (i).

First, the Payphone Advocates argue that the Commission erred in not taking "demand conditions into account". Next, they claim that the Commission made several significant errors in applying its avoided cost methodology and when those errors are converted, the per-call rate increases, rather than decreases, from the rate previously promulgated. Finally, the Payphone Advocates argue that the Commission's cost-based calculations are flawed and that those

⁵ Public Notice, Report No. 2244, 62 Fed. Reg. 67022 (December 23, 1997). The Federal Register lists the filing of petitions for reconsideration by the following parties: The Direct Marketing Association, The Consumer-Business Coalition for Fair Payphone-800 Fees, Source One Wireless II, L.L.C., RBOC/GTE/SNET Payphone Coalition, American Alpha Dispatch Services, Inc., Absolute Best Monitoring, Inc., Affordable Message Center, Inc., Procommunications, Inc., National Dispatch Center, Inc., Abacus, Inc., United Cellular Paging, Inc., PageMart Wireless, Inc., Peoples Telephone Company, Inc., American Public Communications Council, Mobile Telecommunication Technologies Corporation, Paging Network, Inc., and AT&T.

flaws serve only to evidence the wisdom of the Commission establishing a market-based per-call compensation rate.

As set forth below, by its Second Report and Order, the Commission clearly erred in attempting to implement a "market based" pricing approach to implementing a "carrier pays" policy to provide compensation for PSPs -- a policy that is itself flawed in concept. Chief among the Commission's errors were, (a) a misunderstanding that the parties could negotiate an alternative price in view of the Commission's grant of a waiver to PSPs that effectively moots "blocking" as an option for those intermediate and end users who ultimately will be responsible for paying the charges; (b) the methodology for calculating a "market price" for pay telephones; and (c) a complete disregard for the varying lengths of different 1-800 calls.

II. ARGUMENT

A. The RBOC Coalition Erred in Arguing That the Commission's Attempt to Apply Market-Based Rates is Sound

The RBOC Coalition starts with the premise that an open-market rate is, by definition, a "fair" rate, and that "cost-based pricing is inefficient, administratively cumbersome, and a threat to the widespread deployment of payphones". RBOC Coalition, at 2.

On both counts, the RBOC Coalition is wrong. As has been previously been explained to the Commission, the process of identifying a fair market rate for payphone generally, and then adjusting that rate to reflect coinless payphones, is anything but "administratively efficient" or "non-cumbersome".

The Commission erred in holding that the Court of Appeals endorsed the market-based approach as set forth in the Commission's Second Report and Order. This is not surprising since the "market rate" is simply not applicable where, in a called-party pays system, the caller cares not about the "market rate" borne by the called party. Even accepting for the moment the appropriateness of using the concept of market rates, the Commission erred in not understanding that toll-free and coin calls are not in the same market. In the case of toll-free calls, the called party pays for the call itself, while this is not the case with coin calls. In fact, pursuant to the Commission's Second Report and Order, the calling party is required to incur no costs in the case of toll-calls. Even if the market were properly defined, the Commission's Second Report and Order is still in error in that it focuses on the highest perceived market rate, rather than lower perceived market rates.

Were the proper market rate for coinless calls properly determined, the Commission's Second Report and Order errs in that it failed to take into account that payphone calls vary in length, and the charges associated with those calls should also vary. See, e.g., Mtel's Petition for Reconsideration in the referenced proceeding, submitted December 1, 1997, at 6.

**B. There is No Basis for the Commission
to Have Considered Elasticity of Demand
in Establishing Per Call Cost**

The Payphone Advocates next argue that the Commission's default per call rate should be increased to reflect the fact that

a "firm will recover a larger portion of joint and common costs on the sale of products for which there is a lowered elasticity of demand and a smaller portion from those with higher elasticities". RBOC Coalition Petition, at 4, citing the RBOC Coalition Comments submitted on August 26, 1997, at 20-24.

There is no support for the proposition that PSPs should benefit, by virtue of higher default per call charges, by virtue of there arguably being lower elasticities of demand for some calls than for others. Neither the legislative history of the Act, nor its express language is consistent with the RBOC Coalition position. In any event, in an environment where the Commission has promulgated a called-party pays arrangement, the concept of elasticity of demand is simply not applicable. Accordingly, there is no merit to the RBOC Coalition's claim that demand considerations warrant an increase in the per call rate.⁶

C. The Commission Did Not Overstate Avoided Costs or Understate Additional Costs Associated With Subscriber 1-800 Calls

Each of the Payphone Advocates argue that the Commission erred in considering as avoidable costs the cost of the coin mechanism in pay telephones. RBOC Coalition Petition, at 9-12; APCC Petition, at 9-13; and Peoples Telephone Petition, at 4-6. The theory

⁶ In fact, record evidence demonstrates that the costs of the vast majority of PSPs is well under the cost figures of the only group (independent payphone providers) considered by the Commission. See, Petition for Reconsideration, submitted by AT&T on December 1, 1997 in the referenced proceeding.

proposed was that these costs are not "avoided" simply by virtue of coins not being used for 1-800 subscriber calls. Id.

The Payphone Advocates' analysis is flawed in that it ignores the fundamental distinction that the Commission created, whereby coins are used in payphones only for certain calls, and no coins are necessary for 1-800 calls. It would be arbitrary and capricious were the Commission to promulgate rules obviating the need to use coins in 1-800 calls, and then to assert that the cost of those calls must somehow reflect coin mechanisms that are not used by such callers. In this context, the coin mechanisms are not "shared costs" that should be reflected in the costs charged to 1-800 called parties.

D. The Short-Comings in the Second Report and Order Alleged by the Payphone Advocates Pale in Comparison to the Commission's Failure to Properly Consider the Length of 1-800 Calls in Determining a Fair Compensation Rate

Like all other calls, 1-800 calls vary in length from call to call. Paging calls last, on average, only ten percent as long as other calls.⁷ Yet, the default rate established by the Commission does not take into account call duration in assessing the appropriate default compensation rate. As a result, called parties are made to pay the same charge for a very brief paging call as is necessary for a much longer communication. The Second Report and Order does not explain why this key distinction was not taken into consideration in assessing what is fair and equitable to PSPs. The

⁷ See, ex-parte presentation by Paging Network, Inc. submitted September 22, 1997.

effect of this is to vastly overstate the cost that paging carriers must pay on a per call basis. This overstatement dwarfs any of the mechanical errors alleged by the Payphone Advocates, even if those arguments were accurate.

III. CONCLUSION

For the reasons set forth above, there is no merit to any of the arguments raised by the RBOC Coalition. Rather, those arguments are nothing more than a thinly veiled attempt to avoid the Commission reducing the per call rate as it should.

Respectfully submitted,

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January 7, 1998

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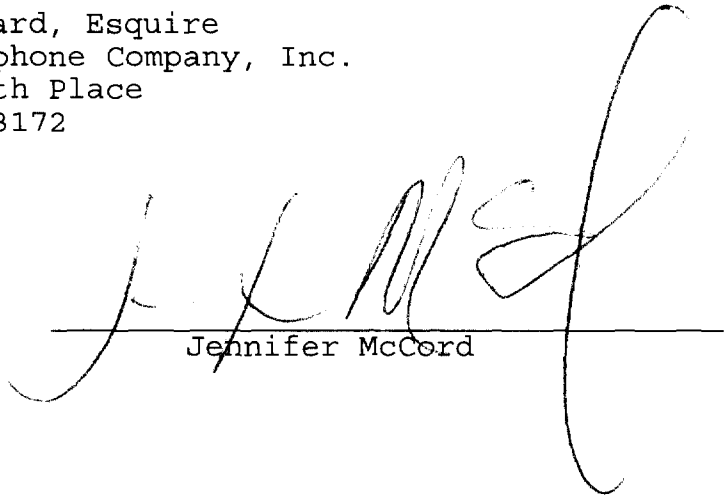
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